

After hearing counsel, *It is ordered and adjudged, that the petition and appeal of Sir Alexander Brand be dismissed, and that the several acts, decrees, and proceedings therein complained of be affirmed; and that the said Sir Alexander Brand shall pay or cause to be paid to the respondent Sir Thomas Kennedy the sum of 5l. for his costs.*

Judgment,
31 March
1710

For Respondents, *Da. Dalrymple.*
John Pratt.

Only one case in each appeal has been found.

Patrick Lord Kinnaird, and Lady Elizabeth
his Wife, - - - - *Appellants;*
John Riddoch the Trustee of Catharine Lyon,
and the said Catharine Lyon, - - - *Respondents.*

Case 5.

24th January 1710-11.

Appeal.—An appeal dismissed and costs awarded, and directions given to levy the same against Appellants who had entered into no recognizance.

ON the 21st of March 1709-10, the appellants brought their appeal from a decree of the Court of Session of the 28th of February then last, by which the Court had preferred the respondents as creditors of the Earl of Aboyne deceased, to the rents of his Lordship's estates for the years 1707 and 1708, to the appellant Elizabeth, who had an annuity out of the said Earl's (her first husband's) estate. An order was made to put in answer to this appeal, and Riddoch accordingly answered on the 21st of December 1709; and upon his petition, it was ordered "that the cause should be heard on the 18th of January following, and that in the mean time Lord Kinnaird should enter into a recognizance to answer costs as usual (a)."

This order was served upon Lord Kinnaird at Aberdeen; but no notice was taken of it, nor did his Lordship enter into any recognizance, or appear on the day appointed for hearing. On the 24th of January 1710-11, the respondents presented a petition to the House, stating the above facts, and that the appeal had been presented merely for delay, and praying that it might be dismissed with exemplary costs: and along with this petition was presented this affidavit of service upon Lord Kinnaird.

After due consideration of this case, it is ordered, that the petition and appeal be dismissed; and it is further ordered, that the said Lord Kinnaird and his wife shall pay or cause to be paid to the

Journal,
24 Jan.
1710-11.

(a) Recognizances at that period were to be entered into according to the terms of the standing order of 20th November, 1680, namely, that the Appellant should, "before any answer to his petition," enter into a recognizance for 100l.

said

said John Riddoch, for Catherine Lyon, or to the said Catherine Lyon, the sum of 40l. for her costs and charges caused by the said appeal.

Two days after the date of this order, the standing order of 26th January 1710-11 relative to recognizances was made, which directs that appellants shall enter into recognizance of the penalty of one hundred pounds within 8 days after the appeal received, to pay such costs as should be awarded.

On the 17th of March 1710-11, Catherine Lyon presented a petition to the House, stating that Lady Kinnaird had been served with the former order, and refused to obey the same, of which the petitioner produced affidavit.

Journal,
22d March
1710-11.

It is ordered that these words be added to the former order, viz.
 “ And that the Lords of Council and Session in North-Britain do
 “ order the 40l. costs, given by this House to Catherine Lyon, to be
 “ levied by the same rules and methods as costs given by them are to
 “ be levied.”

Case 6.

Fountain-
hall, 8th
Nov. and
30th Dec.
1709.

James Greenfields, Clerk, - - - Appellant;
 The Lord Provost and Magistrates of the
 City of Edinburgh, - - - Respondents.

1st March 1710-11.

Appeal.—An appeal competent, though objection made that it implicated the sentence of a presbytery.

Kirk Government.—Proceedings against an episcopal minister, before the Toleration Act, 10 Ann. c. 7. who had been imprisoned for exercising his function, reversed on appeal.

THE appellant, by birth a Scotsman, in 1709 opened a private chapel in Edinburgh, where he exercised a ministerial function to some members of the communion of the Church of England. The Presbytery of Edinburgh summoned him to appear before them, and to “ give an account of himself, and of his presuming
 “ without authority to exercise the office of the holy ministry
 “ publicly on the Lord’s day.” He appeared accordingly, and produced to the Presbytery a diploma of his ordination as a presbyter *secundum ritus et formas Ecclesie Scoticae* from the Bishop of Ross in Scotland, but dated in 1694 after abolition of episcopacy in that country: and he stated that his orders had been allowed in Ireland, where he had taken the oaths to government, and served two curacies with a fair reputation, of which he produced a certificate from the Archbishop of Armagh, and some of his clergy: but he declined the jurisdiction of the Presbytery. They thereupon prohibited him from exercising the office of a minister, for the reason of its “ being within their bounds, and without
 “ their